

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

TEAMSTERS LOCAL 81,affiliated with the
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO
(Yellow Transportation, Inc.)

and

Case 36-CB-2567-1

CRAIG WOOD, an Individual

Michael L. Smith, Esq., Portland,
OR, for the General Counsel
*Paul Hays, of Carney, Buckley,
Hays & Marsh*, Portland, OR,
for the Union

DECISION

Statement of the Case

Gerald A. Wacknov, Administrative Law Judge: Pursuant to notice a hearing in this matter was held before me in Portland, Oregon on June 2, 2005. The charge was filed on December 14, 2004 by Craig Wood, an Individual. An amended charge was filed by Wood on February 7, 2005. On March 31, 2005, the Regional Director for Region 36 of the National Labor Relations Board (Board) issued a complaint and notice of hearing alleging a violation by Teamsters Local 81, affiliated with the International Brotherhood of Teamsters, AFL-CIO (Respondent or Union) of Section 8(b)(1) (A) of the National Labor Relations Act, as amended (Act). The Respondent, in its answers to the complaint, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel (General Counsel) and counsel for the Respondent.

Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

Findings of Fact

I. Jurisdiction

5 Yellow Transportation, Inc. is a State of Indiana corporation, with an office and place of
business located in Portland, Oregon, where it is engaged in the business of operating a freight
transportation facility. In the course and conduct of its business operations it annually derives
gross revenues in excess of \$50,000 from the transportation of freight from the State of Oregon
directly to points located outside the State of Oregon. It is admitted and I find that Yellow
10 Freight, Inc. is, and at all material times has been, an employer engaged in commerce within the
meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

15 The parties stipulated, and I find, that the Respondent union is a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

20 **A. Issues**

The principal issue in this proceeding is whether the Respondent threatened a union member in violation of Section 8(b)(1)(A) of the act.

25 **B. Facts**

Craig Wood, the Charging Party, is a union member and union steward. Wood testified that on October 6, 2004, the Respondent's secretary-treasurer, Jeff Harum, accompanied by another union member and union steward, Tom McMackin, came out to his job site to personally deliver and serve upon Wood an intraunion charge that was brought against Wood by another union member, Thomas Gratrek.¹

35 Upon receiving and signing for the aforementioned charge/summons Wood asked Harum "if he came without his goons this time."² Harum replied that he took offense to that remark, and said that he had brought Tom McMackin "who's a very respected member of the Local." At this point McMackin walked up, and "in kind of a confrontational manner" asked what

1 The intraunion charge alleged that that Wood, in his capacity as a union steward, had engaged in improper conduct by certain statements he made in front of a group of Gratrek's fellow workers to the effect that, because Gratrek had violated some work rule, his fellow co-workers wanted to "take him out in the parking lot." Wood, testifying about this incident, stated that as union steward he was attempting to resolve the matter, and that when Gratrek refused to discuss the matter with him he did tell Gratrek, in front of the entire day shift, that "since he [Gratrek] didn't want to discuss it, there were people that were mad enough that they wanted to take him out in the parking lot."

² Wood testified that he said this because some weeks earlier, on September 22, 2004, Harum had come out to a job site with McMackin and others to resolve a different matter, namely, whether members would be permitted to vote on a contract issue: Wood and his faction believed that a vote was appropriate, but the Local and International disagreed. According to Wood, this incident became somewhat confrontational, and it appeared to him that the posturing of McMackin and others was intimidating.

Wood had said. Wood said to McMackin, "nobody's talking to you. Just go away and mind your own business." Then Harum told McMackin that Wood had called him a goon. McMackin again asked Wood to repeat what he had said, and again Wood said that he wasn't talking to McMackin and that it was none of his business. At that point, McMackin said, according to
 .5 Wood, "I'm going to get you out in the parking lot... I let you go once before, and I'm never going to let you go again." ³ At this point, according to Wood, Harum spoke up and said, "I'm glad you pissed this guy off...you've had this coming for a long time, and you're going to get it, and...you know what?...I'm going to watch and I'm going to enjoy it." ⁴ Wood testified he "just chuckled and said, yeah, right and I started the forklift up and drove back into the trailer, and
 10 just went back to doing what I was doing, moving the freight around." When Wood came back out of the trailer, Harum was "still talking" and, according to Wood, said something to the effect that, "you know, you're not as smart as you think you are, in fact, you're stupid." Wood pretended that he did not hear Harum, and just continued working.

15 Harum testified that he brought McMackin along as a witness to verify his service of the charge/summons upon Wood. Wood, according to Harum, said, "I see you brought your goon." McMackin asked Wood what he had said, and then said something to the effect that "I let you off the hook once, it won't be twice." McMackin, according to Harum did not say anything about taking Wood out into the parking lot, and Harum, referring to the charge he was serving on
 20 Wood, said, "I think you stepped in it this time, Craig." Wood indicated that Harum, who as secretary-treasure would routinely be on the panel to hear and determine Gratrek's charges against Wood, was prejudging the matter. Harum said, "don't worry about it. I will pull myself off the panel because of our past." ⁵

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³ McMackin testified that he did not say anything about getting Wood in the parking lot, but that he did say that he had let Wood go once before and did not intend to do so again. He said this because of a past unmeritorious charge Wood had filed against him in connection with a 2002 union election, *infra*, and was attempting to convey the message that although he had let Wood
 35 go by electing not to bring charges against Wood for that matter, he did intend to file a charge against Wood this time for calling him a goon, as such name calling is in violation of the Union's rules regarding appropriate conduct toward fellow union members.

⁴ Curiously, the General Counsel's brief quotes Harum's as saying, "I'm glad that you pissed this guy off. You've had yours coming for a long time and you're gonna get it. I've got this guy to get you and I'm going to watch, and you know what, I'm gonna love it." (Underlining supplied)
 40 It appears that the deviation from the transcript testimony is not simply typographical, and that the General Counsel is quoting from some other source, perhaps an affidavit given by Wood. In any event, Wood's record testimony differs from the account set forth by the General Counsel.

⁵ The record contains abundant and detailed testimony regarding the contentious relationship
 45 between Wood and Harum, and it would serve no useful purpose to recount the rather convoluted record evidence of past disagreements. It seems sufficient to note Harum and Wood were each running for elected office and supporting different slates of candidates in a 2002 hotly contested union election during which there were charges of fiscal impropriety; Wood was running for president of the Local and Harum was running for secretary-treasurer of the Local. Apparently, there continues to be mutual mistrust and continuing factionalism between the two competing groups.

B. Analysis and Conclusions

The complaint alleges that “Since at least 2002, Wood has engaged in intraunion election activities in opposition to Harum’s intraunion election activities,” and that on October 6, 2004, Harum “threatened Wood with physical violence and/or endorsed a threat of physical violence against Wood” in retaliation for Wood’s intraunion activities.

The complaint does not allege that McMackin, who accompanied Harum, was acting as an agent of the Respondent, or that McMackin’s alleged threat to “get” Wood out in the parking lot is violative of the Act. Rather, the General Counsel contends that the violation occurred when Harum allegedly endorsed McMackin’s statement. It is clear that while Harum and McMackin were engaged in legitimate union business, namely, serving Wood with a grievance/summons, McMackin believed that Wood had referred to him as a union goon. Neither Harum nor McMackin did anything to provoke this epithet and both took offense at Wood’s gratuitous remark.

I have carefully reviewed the record evidence. On the basis of the record evidence, including the demeanor of the witnesses, the relative plausibility and reasonable probabilities inherent in the verbal exchange, and the parties’ past relationship, including the relationship between Wood and McMackin, which is extensive but devoid of physical threats, I am unable to assess credibility with a sufficient degree of confidence to satisfy a standard of reasonable probability; therefore, in fairness to the individuals involved, I decline to make a credibility resolution. Accordingly, I conclude that the General Counsel has not sustained his burden of proof.

Moreover, even assuming *arguendo* that McMackin did threaten to get Wood in the parking lot for calling him a goon, and that Harum indicated his concurrence with this threat, it is reasonable to assume that Harum’s alleged spontaneous remarks were precipitated by Wood’s personal epithet toward McMackin⁶ rather than by Wood’s past intraunion activities. Therefore, I would dismiss this matter on the basis that the record evidence does not demonstrate that Harum’s concurrence with McMackin’s alleged remark was related to Wood’s intraunion activities.

Accordingly, I shall dismiss the complaint in its entirety.

Conclusions of Law

1. Yellow Transportation, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has not violated the Act as alleged in the complaint.

On these findings of fact and conclusions of law, I issue the following recommended:

⁶ Thus, according to Wood, Harum immediately stated that he took offense at Wood’s remark and defended McMackin as “a very respected member of the Local.”

ORDER⁷

The complaint is dismissed in its entirety.

Date: August 5, 2005

Gerald A. Wacknov
Administrative Law Judge

⁷ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.